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Attorney for Respondent,
JIM FILBIN AGGREGATES

BEFORE THE

HEARING PANEL OF THE

**CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
AS ENFORCEMENT AGENCY FOR SAN LUIS OBISPO COUNTY**

JIM FILBIN AGGREGATES
4398 SANTA FE ROAD
SAN LUIS OBISPO, CA
APN 076-371-012

) Case No.: EA-2005-05

) BRIEF OF RESPONDENT, JAMES
) PATRICK FILBIN
)
)

Respondent.

INTRODUCTION

Respondent JAMES PATRICK FILBIN is owner and operator of a facility which processes material such as concrete and asphalt, processing that material into road base and fill. This activity has been occurring on the property known as 4398 Santa Fe Road, San Luis Obispo, California, since 1979. The activities have been investigated extensively over the years by both the county of San Luis Obispo and federal agencies such as the Environmental Protection Agency and the activities have never been subject to any finding that they were improper or illegal. On the contrary, the agencies have each tacitly conceded that the activities

1 are lawful. In addition, at this moment there are condemnation proceedings pending in San Luis
2 Obispo County which will lead to the acquisition of the property by the county of San Luis
3 Obispo for purposes of airport parking and development. The California Environmental
4 Protection Agency, therefore, represents the latest in an attempt to interfere with the
5 Respondent's operations. Given the fact that the agency is operating as the enforcement arm for
6 San Luis Obispo County, San Luis Obispo County Planning and Development requirements and
7 Use requirements must be examined first and, if Respondent is operating within recognized,
8 lawful activities as defined by San Luis Obispo County, the current agency is estopped from
9 denying the legality of Respondent's operations. Indeed, the agency lacks a right to assert a
10 claim to restraining or other orders which violate or are inconsistent with lawful requirements
11 imposed upon the Respondent by the County of San Luis Obispo. This current proceeding
12 appears to be an attempt to minimize or destroy the value of Respondent's property in order to
13 thereafter acquire it in condemnation proceedings at a fraction of its true cost. These
14 proceedings, therefore, are unseemly at least and constitute a joint effort coordinated with the
15 General Services Department of the County of San Luis Obispo to deprive the Respondent of
16 his property without due process of law and these proceedings should be stayed until the
17 condemnation proceedings now pending in San Luis Obispo County are consummated at which
18 point these proceedings will become permanently moot.

19 As noted in the Notice of Appeal, Respondent is processing material which fits within
20 the exceptions provided for by California Code of Regulation as an excluded activity. Excluded
21 activities at Section 17388.2 including use of gravel or rock or sand or soil that has never been
22 used in connection with any structure, road or parking lot; inert debris engineer fill activities
23 which conclude within one year of commencement; use of fully cured asphalt or
24 uncontaminated concrete in connection with road repair, airport runway construction, or bridge
25 work. Section 17388.2(a)(3)(6) as noted, at Section 17381.1, a site which receiving only

1 construction and demolition debris and inert debris shall be classified as a recycling center.
2 Recycling centers are not subject to any other requirements of Title 14.

3 Respondent is not subject to the jurisdiction of the agency nor is he subject to
4 compliance with any orders which might be issued by this hearing panel. It cannot be
5 emphasized enough that the agency is acting as the enforcement arm for the County of San Luis
6 Obispo, yet the County of San Luis Obispo has conceded after many years of investigation that
7 Respondent is not involved in grading, excavation, and that Respondent's operations are
8 recognized as being grandfathered under local ordinances dating back to 1979, the year in
9 which operations by Respondent commenced and which predate any relevant County
10 ordinances, in any event.

11 Respondent submits in support of this brief a copy of San Luis Obispo County Land Use
12 Permit Requirements, Section 22.01.031, revised November 1999, and originally enacted in
13 1981 as Ordinance 2163. A copy of Ordinance 1527 dated October 6, 1975 changing the
14 zoning of the subject property from agricultural to industrial; a copy of a 1979 Land Use
15 Category May designating and confirming the industrial usage of the subject property
16 highlighted in yellow; a copy of approved industrial uses in rural industrial areas from the
17 County of San Luis Obispo, to include recycling and scrap; but no specific designation
18 specifically applicable to the recycling operation of the Respondent which is of concrete and
19 asphalt essentially. In short, the industrial usage of the Respondent is lawful in the rural airport
20 area and is not subject to plot plan or site plan approval; a copy of the definition of grading
21 requiring a grading plan to be approved where existing elevations are altered by the movement
22 of more than 50 yards of material, something which has never occurred at the subject site; a
23 copy of the San Luis Obispo Planning Ordinances listing non-conforming uses; a copy of San
24 Luis Obispo County's Heavy Industrial District Use Permit sections applicable in the year 1979,
25 including a list of uses that require use permits, none of which would be applicable to the

1 Respondent; a copy of a February 26, 2004 letter to the Respondent initiating the process of
2 condemnation by the County of San Luis Obispo and constituting direct proof of a joint
3 collaboration between this agency and the County of San Luis Obispo to deprive Respondent of
4 his property without due process of law. These entire proceedings should be stayed until the
5 condemnation process is concluded.

6 Also attached herewith are citations to case authority recognizing the constitutional right
7 of the Respondent to continue the activities commenced in the year 1979 free from the
8 retroactive taking of property through the use of spot zoning or forced use of uneconomic
9 activity. *Hamner v. Ross*, 59 Cal.2d 776, *Smith v. Los Angeles*, 24 Cal.App.4th 990, *Agins v.*
10 *Tiburon*, 24 Cal.3d 266, *Cornier v. San Luis Obispo*, 161 Cal.App.3d 850, *Arnel v. Costa Mesa*,
11 126 Cal.App.3d 330, and *Wilkins v. San Bernardino*, 29 Cal.2d 332. The activities of the
12 Respondent were lawful when they began and were authorized by local government. They may
13 not be retroactively destroyed by the same government. *First English Evangelical v. Los*
14 *Angeles*, 482 US 30. There is no way on Earth this property can be used economically other
15 than as a recycling center and the recycling that is occurring is not subject to regulation by this
16 agency in a manner inconsistent with that adopted by the County of San Luis Obispo. Attached
17 herewith also is a copy of San Luis Obispo County Land Use Ordinance 22.72.030 recognizing
18 the lawful right to continuing nonconforming use.

19 A declaration from the Respondent and from counsel are also enclosed.

20 For reasons above stated, these proceedings should be stayed and then permanently
21 stayed upon conclusion of the condemnation process initiated by the County of San Luis
22 Obispo.

23 Dated: 4-4-06

24 Respectfully submitted,

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WILEY RAMEY
Attorney for Respondent James Patrick Filbin

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**Attorney for Respondent,
JIM FLBRIN AGGREGATES**

BEFORE THE
HEARING PANEL OF THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
AS ENFORCEMENT AGENCY FOR SAN LUIS OBISPO COUNTY

JIM FILBIN AGGREGATES
4398 SANTA FE ROAD
SAN LUIS OBISPO, CA
APN 076-371-012

Case No.: EA-2005-05

DECLARATION OF WILEY RAMEY

Respondent.

I, WILEY RAMEY, declare I am attorney for Respondent James Patrick Filbin and further declare as follows:

I am licensed to practice law in the State of California and could and would testify to the following of my own personal knowledge.

I have acquired true and correct copies of County of San Luis Obispo Land Use Ordinances dated back to 1979 and have attached them to this brief.

I request the panel to take judicial notice of these ordinances.

1 I am also personally aware that the County of San Luis Obispo has investigated the
2 activities of the Respondent for years but to my knowledge there is currently no prohibition or
3 restraining order issued against the Respondent by the County or any other agency. I am also
4 personally aware that the Federal Environmental Protection Agency searched the property in
5 1995 for toxic waste or other environmental violations but that the investigation resulted in no
6 charges or proceedings being brought against the Respondent.

7 As the enforcement arm of the County of San Luis Obispo, this agency may not,
8 consistent with its charge, ignore lawful and applicable regulations issued by the County of San
9 Luis Obispo and applicable to this Respondent.

10 I declare under penalty of perjury that the foregoing is true and correct, except as to
11 those matters amounting to opinion and as to them, I believe that they are true. Executed on

12 4-4, 2006, at San Luis Obispo, California.

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14 _____
15 WILEY RAMEY
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BEFORE THE

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
AS ENFORCEMENT AGENCY FOR SAN LUIS OBISPO COUNTY

JIM FILBIN AGGREGATES) Case No.: EA-2005-05
4398 SANTA FE ROAD)
SAN LUIS OBISPO, CA) DECLARATION OF JAMES PATRICK
APN 076-371-012) FILBIN
)
)
)

Respondent.

I, JAMES PATRICK FILBIN, declare I am the Respondent and owner of the real property known as 4398 Santa Fe Road, San Luis Obispo, California, and could and would testify to the following of my own personal knowledge:

I have been in the business of acquiring and processing concrete and asphalt materials since 1979 and these materials are separated on my property. They are temporarily stored separately and are processed separately and are not commingled. To my knowledge, the debris which I receive is known as Type A Inert Debris and the residual of this material is less than ten

1 percent by weight of the amount of debris received. In addition, the debris sorted for resale is
2 sorted within thirty days of acquisition. I am capable of identifying the separate storage areas of
3 the separate materials on photographs if I am able and my health permits me to appear at this
4 hearing.

5 There is no other economic use for my property given the existence of the material on
6 the property and the operations which have been ongoing and the recycling of this material is
7 economically important to the construction and development of airport runways and highways
8 in the State of California and in the County of San Luis Obispo. There is no other recycling
9 center known to me like mine.

10 I am currently the subject of a condemnation proceeding initiated by the County of San
11 Luis Obispo which intends to acquire my property in order to extend and expand parking and
12 related development associated with the airport here in San Luis Obispo. This proceeding is the
13 latest attempt by an agency to investigate my property and activities and I have been exonerated
14 on multiple occasions. I have never been found guilty of any criminal offense, nor have I ever
15 been the subject of a restraining order in a civil courtroom as a result of my activities on my
16 property. I was investigated by the Federal Environmental Protection Agency which searched
17 my property in 1995 and no action was taken against me following that investigation. I have
18 also been investigated by the County of San Luis Obispo and the most recent criminal charges
19 against me did not result in a criminal conviction. I have been lawfully operating since 1979 as
20 a recycling center.

21 I acquired this property in 1978 at a time when there was no prohibition against my
22 operation in the County of San Luis Obispo Land Use Ordinances. I have attached herewith
23 true and correct copies of those ordinances dating back to 1979.

24 If this proceeding results in some type of restraining order against me and my property,
25 or otherwise impacts the lawful uses of my property, the County of San Luis Obispo will be

successful in minimizing the value of my property in order to acquire it through condemnation at a fraction of its value and my right to due process of law will have been violated by this agency.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 2006, at San Luis Obispo, California.

JAMES PATRICK FILBIN

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TO:

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FROM: SAN SIMON LODGE

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COMMENT: